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Immigration and Naturalization Service



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OFFICE OF ADMINISTRATIVE APPEALS
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File: EAC-02-016-51255 Office: Vermont Service Center

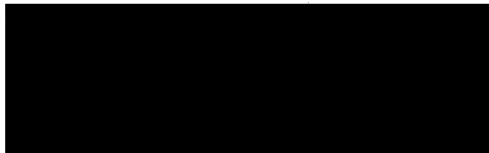
Date: **JAN 16 2003**

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a private club featuring golf, racquet sports, aquatics, and social activities. It has 203 employees and a gross annual income of \$6,453,055. It seeks to employ the beneficiary as an events coordinator for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that the proposed duties are so complex as to require a baccalaureate degree. On appeal, counsel provides letters from industry experts in support of her claim that the proffered position is a specialty occupation. Counsel also provides evidence to demonstrate that the petitioner required a baccalaureate degree in a related field for individuals employed in similar positions.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health,

education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. 214.2(h) (4) (iii) (A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Her duties will include implementing current events and creating new events for the Club and planning sports programs; devising appropriate budgets for all these events; coordinating all tennis and paddle tennis programs with the Director of Racquet Sports (e.g. Men's Sr. Paddle Tennis, Women's Sr. Tennis); teaching tennis and paddle, including private lessons, group lessons, clinics and camps, at all levels; assisting in organization of all racquet activities under the direction of the Racquet Sports Director; formulating procedures regarding tennis and paddle play on Club courts under the direction of the Racquet Sports Director and overseeing their proper implementation; advising on proper selection and care of all tennis and paddle equipment.

The proffered position is similar to that of a recreation and fitness worker. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at page 338 finds that an increasing number of employers require fitness workers to have a bachelor's degree in fields related to health or fitness, such as

exercise science or physical education. A bachelor's degree (and, in some cases, a master's degree in exercise science, physical education, or a related area) along with experience, usually are required to advance to management positions in a health club or fitness center. Here, the petitioner is requiring a bachelor's degree in sports management, health and human development or a related field, as well as a strong understanding of racquet sports. The petitioner's requirement for a degree and experience in this specific specialty is reasonable, given the full-time career professional nature of the proffered position. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.